CRIMINAL REVISION No.754 OF 2001

Against the judgment dated 20.8.2001 passed by Sri Alok Chandra Prasad,7th Addl.Sessions Judge,Rohtas, Sasaram in Cr.Appeal No.193/03 of 1987/98 affirming the judgment dated 11.8.1987 passed by Sri Rajesh Kumar Srivastava,J.M.IInd Class,Sasaram in G.R.Case No.2567 of 1982 (Tr.No.146 of 1987).

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1. Chander Nonia @ Ramchandra Nonia
2. Laxaman Nonia @ Lachhu Nonia
3. Rama Shankar Nonia @ Shankar Nonia
4. Moti Nonia
5. Faujdar Nonia
6. Triloki Nonia ..... Petitioners

Versus

The State of Bihar and Jokhan Nonia. Opp.Parties

For the petitioners : Mr. Bachan Jee Ojha,Advocate
For the State : Mr. G.P.Gaiswal, Addl.P.P.

P R E S E N T

THE HON'BLE MR. JUSTICE SHYAM KISHORE SHARMA

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S.K.Sharma,J. This revision application has been filed by the above six petitioners against the judgment dated 20.8.2001 passed by 7th Additional Sessions Judge, Rohtas, Sasaram in Cr.Appeal No. 193/03 of 1987/98 affirming the judgment of conviction and sentence dated 11.8.1987 passed by Judicial Magistrate, IInd Class, Rohtas, Sasaram in G.R.Case No. 2567 of 1982/Trial No. 146 of 1987 by which the petitioners were convicted and sentenced under Section 324/34 of the Indian Penal Code to undergo simple imprisonment for six months.

Heard learned counsel for the petitioners

and learned A.P.P. None appears on behalf of opposite party no.2 inspite of repeated calls though he has appeared through vakalatnama.

The prosecution case,in short, is that on 20.11.1982 when the accused persons were cutting the paddy crops in the filed of the informant Jokhan Nonia, he asked them not to do the same. Upon which the accused persons assaulted the informant with bhala and farsa and when Arjun Nonia, cousin of the informant, came to rescue him, he was also assaulted by the accused persons and accused persons harvested the paddy crops of worth Rs.400/-. On the basis of statement of informant Jokhan Nonia, Rajpur P.S.Case No. 179 of 1982 for offences under Sections 379,324 and 323/34 of the Indian Penal Code was registered. During investigation, some part of allegation were disbelieved and after completion of investigation, chargesheet was submitted under Section 324/34 of the Indian Penal Code. Thereafter cognizance was taken and trial proceeded.

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In order to prove its case, the prosecution examined altogether seven witnesses. The Investigating Officer has not been examined

in this case.

The defence of the accused-petitioners was of false implication due to land dispute. Both the parties are agnates and they have partitioned the lands and the P.O. land was allotted to petitioner no.1 and the land was in his exclusive possession. This fact finds support from the rent receipts which are in the name of father of petitioner no.1.

It has been submitted by learned counsel for the petitioners that the courts below have not considered the evidence of two defence witnesses. D.W.1 Umeshwar Nath Verma has proved the certified copy of the counter case which has been marked Ext.A. D.W.2 Dr.Basant Kumar has proved the injuries of the petitioner no.1 which has been marked Ext.B. The certified copy of order of Bhu-Arjan Padadhikari dated 20.11.1985 has been marked as Ext.C. Further submission is that the informant and his persons were aggressors.

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The courts below after considering all the materials found the petitioners guilty.

I have perused the judgments of both the courts below. The trial court has analysed the

evidence of each and every witnesses produced on behalf of the prosecution and the defence and has come to the finding that on the date and time of occurrence the accused persons committed overt acts as a result of which injuries were caused. Not only the trial court, the appellate court has also applied its separate mind and after analysing the evidences on record affirmed the finding of the trial court.

Both the courts below have found the petitioners guilty of the offence alleged. The revisional court has to see whether any illegality has been committed by the courts below or not. After analyzing the judgments of both the courts below I find no illegality and the same are not required to be interfered with by this court. Accordingly, the conviction of the petitioners are maintained.

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On the question of sentence, learned counsel for the petitioners submits that as the petitioners have remained in custody for a considerable long time in course of trial, appeal and revision, some lenient view may be taken and if the sentence is reduced to the period already undergone by them, the same may be sufficient for

the ends of justice.

Taking into consideration the submissions of the learned counsel for the petitioners and all the facts and circumstances of the case, I am also of the view that the sentence of the petitioners needs to be modified. Accordingly, the sentence of the petitioners is reduced to the period already undergone by them which will be sufficient for the ends of justice.

In the result, this revision application is dismissed with modification in sentence.

(Shyam Kishore Sharma, J.)

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Patna High Court, Patna
The 15th April,2008.
Tahir/-(NAFR).